IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 25314 of 2007(L)

PETITIONER:

N.R.SUKUMARAN,
S/O.N.I.REGHAVAN, AGED 59 YEARS,
FORESTER (RETD), VADAKKANCHERRY RANGE)
THRISSUR DIVISION (RESIDING AT NELLIPARMBIL
KOLAZHY,THRISSUR DISTRICT)

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

---

1. THE STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT
FOREST & WILD LIFE DEPARTMENT,
SECRETARIAT,TRIVANDRUM.

2. THE CHIEF CONSERVATOR OF FORESTS
(ADMINISTATION),TRIVANDRUM.

3. THE DIVISIONAL FOREST OFFICER,
AYYANTHOLE,THRISSUR-680003.

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC,J.

W.P (C) No. 25314 of 2007

Dated this the 21st day of August, 2007

J U D G M E N T

Petitioner has retired from the service as a Forestor on 30.6.2003. This writ petition is filed seeking to quash Exhibits-P9 and 17. The facts would indicate that by Exhibit-P11 penalty of withholding of two increments with cumulative effect and recovery of an amount of Rs. 56,118/- was ordered against the petitioner by the 2nd respondent. Since Exhibit-P11 was after his retirement only the 1st respondent was competent to proceed against the petitioner in terms of the Rules. Accordingly, by Exhibit-P13, Ext.P11 was set aside with liberty for the 1st respondent to continue the proceedings against the petitioner.

2. Thereafter, Exhibit-P15 show cause notice was issued and the petitioner submitted his explanation by Exhibit-P16. This was considered by the 1st respondent and Exhibit-P17 order was issued ordering recovery of Rs. 56,118/- under Part III, Rule 3 of K.S.R. It is challenging Exhibit-P17 that this writ petition has been filed.

3. Findings in Exhibit-P17 are that as a Forestor petitioner submitted Exhibit -P2 report regarding certain

quantity of Rose wood timber for its removal from the patta holding of an applicant and Exhibit-P2 report contains the measurements of the logs. In Exhibit P2 it is stated that he has seen only a photocopy of the patta which accordingly did not contain any reservation over the trees in the land. Exhibit -P2 (a) is the patta that was verified by the petitioner and the schedule to Exhibit -P2 shows Government had in fact reserved ownership over four species of timber in terms of condition No.1 of Exhibit P2 (a). Based on this report, Village Officer issued Exhibit-P3 certificate and the Range Officer issued Exhibit-P4. Finally, the Divisional Officer issued pass as per Exhibit-P5. On the basis of Exhibit-P5 pass issued in favour of the applicant the timber was removed from the land. Although the pass was cancelled subsequently, the timber could not be retrieved as it had already reached its intended destination.

4. It was following that the officers concerned including the petitioner, Range Officer, Deputy Ranger and two Forest Guards were placed under suspension as per Exhibit-P6, which states that on account of the commissions and omissions on the part of the officers loss to the tune of Rs. 8.18 lakhs was caused

to the Government. This ultimately lead to an enquiry and imposition of penalty by Exhibit-P11, which are stated above, was set aside and the final order that is passed in Exhibit-P17.

5. Exhibit-P17 contains a positive finding that petitioner did not take any action for the protection of reserved rose wood timber and that he had committed grave dereliction of duty which lead to the removal of timber from the patta holding. It is also found that he had suppressed actual measurements which lead to the issuance of pass by the Divisional Forest Officer and that he had failed to protect the interest of the Government. It was accordingly that his proportionate liability has been quantified at Rs. 56,119/- and the amount is ordered to be recovered from the petitioner.

6. Learned counsel for the petitioner would submit that there was no reservation of ownership over timber in Exhibit P2 (a). I have already found it to be erroneous. When this was pointed out to the counsel, he contends that number of trees should have been counted and its number should have been mentioned in the patta. I am not able to agree with the counsel in this respect. If the Government have reserved ownership by

species that reservation is binding on the patta holder. Petitioner and other forest officers are bound to ensure that such reservation is safeguarded. It is stated that he only gave a report that he has not issued any pass. But the facts disclosed that based on this report also that pass was ultimately issued.

In any case, factual findings of misconduct have been entered against the petitioner in Exhibit-P17 on the materials that were available before 1st respondent. There are no materials to come to a conclusion that the findings in Exhibit-P17 are per verse, warranting interference under Article 226 of the Constitution of India. I decline jurisdiction and the writ petition will stand dismissed.

(ANTONY DOMINIC,JUDGE)

ma

/TRUE COPY/

P.A. TO JUDGE

K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007